

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36496

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER  
49 U.S.C. § 24308(e)—CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN  
RAILWAY COMPANY

Digest:<sup>1</sup> This decision directs the parties to be prepared to address several issues and a pending renewed request by the National Railroad Passenger Corporation for access to certain lines of Norfolk Southern Railway Company, at the upcoming evidentiary hearing scheduled to begin on April 4, 2022.

Decided: March 11, 2022

On February 16, 2022, the Board held a prehearing conference with counsel for the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (the latter two together, the Port),<sup>2</sup> to discuss issues and procedures related to the next phase of the proceeding, an evidentiary hearing that had been scheduled to begin on March 9, 2022. By decision served March 1, 2022, the Board granted CSXT's unopposed motion to postpone the hearing and rescheduled it for April 4 and 5, 2022, and continuing on April 6 and 8, 2022, if necessary. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496 (STB served Mar. 1, 2022).

At the prehearing conference, the Chairman requested that, prior to the evidentiary hearing, the Parties contact the United States Coast Guard (Coast Guard) to discuss the issue of scheduling the operations of the movable bridges along the Gulf Coast corridor. At the evidentiary hearing, the Parties should be prepared to report to the Board on any meeting with the Coast Guard on that issue. In addition, the Parties should be prepared to address the following issues:

1. On February 18, 2022, in response to a request from the Board at the prehearing conference, Amtrak filed under seal copies of its operating agreements with CSXT

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Amtrak, CSXT, NSR, and the Port will be referred to herein as "the Parties."

- and NSR. How do the agreements apply to the matters in dispute in this case and what, if any, steps have been taken by the Parties pursuant to the agreements? Are any additional steps contemplated to be taken by any of the Parties pursuant to these agreements?
2. Do the terms of section 5.1E of Amtrak's agreement with CSXT and the similar terms of section 5.1(e) of Amtrak's agreement with NSR apply to Amtrak's application in this proceeding?
  3. If the Board were to determine that CSXT and NSR failed to demonstrate that the additional trains as proposed by Amtrak would "impair unreasonably freight transportation," see 49 U.S.C. § 24308(e)(2)(A), and the Board ordered CSXT and NSR to provide or allow for the operation of the additional trains, may the Board, in accordance with § 24308(e)(3), also require the construction of additional infrastructure under its authority to "prescribe reasonable terms and compensation for using the facilities and providing the services" pursuant to § 24308(a)?
  4. If the Board were to find that CSXT and NSR demonstrated that the additional trains as proposed by Amtrak would "impair unreasonably freight transportation" without some measure of additional infrastructure, could the Board nevertheless order CSXT and NSR to provide or allow for the operation of the additional trains, subject to the construction of additional infrastructure determined by the Board, either under § 24308(a) or otherwise?
  5. If the Board were to order that CSXT and NSR provide or allow for the operation of additional trains and that additional infrastructure be constructed, may the Board, under § 24308(a), determine which party bears the cost of constructing which infrastructure projects or otherwise apportion the costs of additional infrastructure?

Prior to the prehearing conference, on February 10, 2022, Amtrak filed a renewed request for an interim order requiring NSR to provide Amtrak with access to NSR's rail lines so Amtrak can begin scheduling crew qualification trains for the Gulf Coast service. On February 28, 2022, NSR filed a reply. The Board will not rule on Amtrak's request at this time, but, in addition to the issues above, Amtrak and NSR should be prepared to address this request further at the evidentiary hearing.

It is ordered:

1. At the evidentiary hearing, the Parties should be prepared to address the issues identified above, including Amtrak's renewed request for an interim order regarding access to NSR's rail lines.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.